

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

David N. Cohen (DC4287)
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Attorneys for Defendant
Lexington Insurance Company

C.R. BARD, INC.,

Plaintiff,

- against -

LEXINGTON INSURANCE COMPANY,

Defendant.

NOTICE OF REMOVAL

Civil Action No.

[Document Electronically Filed]

TO: William T. Walsh, Clerk
United States District Court, District of New Jersey
M.L. King Jr. Federal Building and U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07102

Pursuant to 28 U.S.C. §§ 1331, 1332, 1441 and 1446, defendant Lexington Insurance Company ("Lexington"), by its counsel Edwards Angell Palmer & Dodge LLP, files this Notice of Removal of this civil action from the Superior Court of the State of Jersey, Law Division, Union County, to the United States District Court for the District of New Jersey. In support of its Notice of Removal, Lexington states as follows:

1. State Court Action.

Plaintiff C.R. Bard, Inc. ("Plaintiff") filed this action against defendant in the Superior Court of New Jersey, Law Division, Union County, Docket No. L-1439-07. The Summons and

Complaint were served by Plaintiff on the State of New Jersey, Department of Banking and Insurance on May 2, 2007 and copies are attached hereto as Exhibit A.

2. Diversity of Citizenship

The complaint alleges that Plaintiff is a citizen of the State of New Jersey. See Complaint, ¶ 1. Lexington is an insurance company organized pursuant to the laws of the Delaware and with its principal place of business in Boston, Massachusetts. Therefore, the parties are citizens of different states as required by 28 U.S.C. §1332.

3. Amount in Controversy

Plaintiff's complaint seeks declaratory judgment that policy number 7412134, issued by Lexington to plaintiff ("the Policy"), provides defense and indemnity coverage for a cause of action presently pending in the United States District Court for the Eastern District of Missouri. See Complaint, ¶¶ 3-4, 9-12. Plaintiff's complaint also seeks damages for breach of contract by Lexington in connection with Lexington's alleged failure to provide coverage under the Policy. See Complaint, ¶¶ 13-17. Based upon the allegations in the Complaint, it cannot be said that the Complaint seeks less than \$75,000, exclusive of interest and costs.

4. Diversity Jurisdiction

Accordingly, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332, and this action may be removed pursuant to 28 U.S.C. § 1441(a).

5. Timeliness of Notice of Removal.

Defendant first received notice of the Complaint when the State of New Jersey, Department of Banking and Insurance mailed a copy of the Summons and Complaint to defendant on May 2, 2007, which was received by defendant on May 8, 2007. Based on the file

stamp on the Complaint (Exhibit A), the action was initially filed on April 23, 2007. Removal of this action is therefore, timely under 28 U.S.C. § 1446(b).

6. Relief Requested.

Defendant requests that the United States District Court for the District of New Jersey assume jurisdiction over the above-captioned action and issue such further orders and processes as may be necessary to bring before it all parties necessary for the trial of this action.

7. Defendant has served a copy of this Notice of Removal upon plaintiff's counsel, Jeffrey M. Pollack, Esq., Fox Rothschild, LLP, Princeton Pike Corporate Center, 997 Lenox Drive, Lawrenceville, NJ 08648. The manner of service is set forth in the attached Certification of Service.

8. In addition to filing this Notice of Removal in the Office of the Clerk of the United States District Court for the District of New Jersey, Newark, New Jersey, Defendant is causing a copy of this Notice of Removal to be filed with the Clerk of the Superior Court of New Jersey, Law Division, Union County, to effect removal of this action to the United States District Court pursuant to 28 U.S.C. § 1446(d).

9. Simultaneously with the filing of this Notice of Removal, the Defendant is applying to the Clerk of the United States District Court for the District of New Jersey for an extension of time to reply to the Complaint for an additional fifteen (15) days pursuant to Local Rule 6.1(b).

10. This Notice of Removal is also filed with a Disclosure Statement in accordance with the requirements of Rule 7.1 of the Federal Rules of Civil Procedure.

WHEREFORE, defendant prays that this action be removed from the Superior Court of the State of New Jersey, Law Division, Union County, to the United States District Court of the

District of New Jersey, Newark vicinage, and further requests that the action thereafter proceed in this Court as an action properly removed thereto.

s/David N. Cohen
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Attorneys for Defendant

Dated: May 31, 2007

CERTIFICATION OF SERVICE

I hereby certify that on May 31, 2007, a true copy of the within Notice of Removal, and Exhibit A thereto, was filed and served pursuant to 28 U.S.C. §1446(b), the Federal Rules of Civil Procedure, and/or the District of New Jersey's Local Rules and/or the District of New Jersey's ECF Policies and Procedures; (i) via ECF filing to the Clerk's Office, U.S. District Court, Newark vicinage, M.L. King, Jr., Federal Building and U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07102, and (ii) via first class mail addressed to Jeffrey M. Pollock, Fox Rothschild LLP, 997 Lenox Drive, Building 3, Lawrenceville, New Jersey 08648-2311.

Dated: May 31, 2007

s/David N. Cohen
David N. Cohen